163-701

TRANSCRIPT OF RECORD.

163-701

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. ~~328.~~ 61

WILLIAM H. ROBERTSON, COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFF IN ERROR,

vs.

MORRIS J. DRUCKER.

FILED OCTOBER 20, 1891.

No. ~~337.~~ 64

MORRIS J. DRUCKER, PLAINTIFF IN ERROR,

vs.

WILLIAM H. ROBERTSON, COLLECTOR OF THE PORT OF NEW YORK.

FILED OCTOBER 26, 1891.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

to execute a writ ordered by this Court and resisted by the Governor and militia of Pennsylvania is remembered by all. The Constitution says that "The judicial power shall extend to all cases in law and equity arising under this Constitution." Congress has re-enacted this provision of the Constitution in conferring jurisdiction, although limiting its application to cases involving more than two thousand dollars.

Both reason and the letter of the law point to the judiciary as the proper department to act in any case that can be brought within its sphere.

How is it to act? Can it only give damages for a breach of the amendment, or may it restrain its violation and preserve property that is about to be destroyed without due process of law? Prevention is always better than damages. We believe that our appeal to a Court of equity is the proper proceeding. The Courts of common law offer no *adequate remedy*. Although the case may be new, and, at first, startle some of those who walk only in the shadow of Coke and Blackstone, room must be made for it and equity open its doors.

Watson vs. Sutherland, 5 Wall., 74.

We think this brief exposition of the points relied upon by the appellant is sufficient. The Court below, in an excess of caution, entirely misconstrued both the theory upon which suits of this kind are based, and the constitutional protection thrown around citizens by the Fourteenth Amendment. We ask that the judgment be reversed.

Respectfully submitted.

C. S. THOMAS,
W. H. BRYANT,
Solicitors for Appellant.

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1 UNITED STATES OF AMERICA, ss:

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the records and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court before you, between Morris J. Drucker, plaintiff, and William H. Robertson, defendant, a manifest error hath happened to the great damage of the said plaintiff, as by his complaint appears. We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October, eighteen hundred and ninety-one, in the said Supreme Court, to be then and there held that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 9th day of December, in the year of our Lord one thousand eight hundred and ninety.

JOHN A. SHIELDS, *Clerk.*

The foregoing writ is hereby allowed.

E. HENRY LACOMBE.

2 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from 5 to 55, inclusive, contain a true and complete transcript of the records and proceedings had in said court in the case of Morris J. Drucker, plaintiff in error, against William H. Robertson, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New York, in the second circuit, this eighth day of October, in the year of our Lord one thousand eight hundred and ninety-one, and of the independence of the United States the one hundred and sixteenth.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

(Indorsed:) E. & A. A., 954. 9358. U. S. Supreme Court. Morris J. Drucker, plaintiff in error, against William H. Robertson, defendant in error. Writ of error. Charles Curie, attorney for plaintiff in error. Due service of a copy of the within writ of error is hereby admitted this 9 day of Dec., 188 . Edward Mitchell, attorney for defendant in error. U. S. circuit court. Filed Dec. 9, 1890. John A. Shields, clerk.

3 UNITED STATES OF AMERICA, ss:

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the records and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court before you, between Morris J. Drucker, plaintiff, and William H. Robertson, defendant, a manifest error hath happened to the great damage of the said William H. Robertson, plaintiff in error, as by his complaint appears. We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October, eighteen hundred and ninety-one, in the said Supreme Court, to be then and there held that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 22d day of Dec., in the year of our Lord one thousand eight hundred and ninety.

JOHN A. SHIELDS, *Clerk.*

The foregoing writ is hereby allowed.

E. HENRY LACOMBE.

4 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from 5 to 55, inclusive, contain a true and complete transcript of the records and proceedings had in said court, in the case of William H. Robertson, plaintiff in error, against Morris J. Drucker, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New York, in the second circuit, this eighth day of October, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States the one hundred and sixteenth.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

(Indorsed:) E. & A. A., 956. 9358. U. S. Supreme Court. William H. Robertson, plaintiff in error, against Morris J. Drucker, defendant in error. Writ of error. Edward Mitchell, U. S. atty., attorney for plaintiff in error. Due service of a copy of the within writ of error is hereby admitted this 22 day of Dec., 1890. Charles Curie, attorney for defendant in error. U. S. circuit court. Filed Dec. 23, 1890. John A. Shields, clerk.

5 Superior court of the city of New York.

MORRIS J. DRUCKER, PLAINTIFF,
against
WILLIAM H. ROBERTSON, DEFENDANT. } Summons No. 2.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Dated, New York, Sept. 1, 1884.

CHAS. CURIE,
Plaintiff's Attorney,
Offices No. 44 Exchange Place, New York City.

6 (Indorsed:) No. 2, N. Y. superior court, Morris J. Drucker, plaintiff, against William H. Robertson, defendant. Summons. Chas. Curie, plaintiff's attorney, 44 Exchange Place, New York City. Due service hereof admitted this day of , 189 . Served Sept. 1, 1884.

7 N. Y. superior court.

MORRIS J. DRUCKER
versus
WILLIAM H. ROBERTSON. } 2. Notice of appearance and demand.

You will please take notice that I am retained by, and appear as attorney for, the defendant in this action, and demand service of a bill of particulars of the plaintiff's claim herein, and a copy of the complaint and all the papers in this action upon me, at my office in the United States court and post-office building, in the city of New York.

Yours,

ELIHU ROOT,
United States Attorney, Attorney for Defendant.

New York, Sept. 20, 1884.
To C. CURIE, Esq.,
Attorney for Plaintiff.

8 (Endorsed:) 9358. N. Y. superior court, M. J. Drucker versus William H. Robertson. Notice of appearance. Elihu Root, United States attorney, attorney for defendant. To C. Curie, esq., plaintiff's attorney.

9 *The President of the United States of America to the judges of the superior court of the city of New York, greeting:*

We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, shall be certified of a certain cause, commenced before you against William

H. Robertson, defendant, by Morris J. Drucker & al., plaintiffs, do therefore command you that the record and proceedings in the said cause you distinctly and openly send to the said circuit court, at the city of New York, on the 3d day of October, 1884, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness, Morrison R. Waite, esquire, chief justice of the Supreme Court of the United States, the 29 day of September, in the year one thousand eight hundred and eighty-four.

[SEAL.] TIMOTHY GRIFFITH,
Clerk.

ELIHU ROOT,
United States Attorney, Attorney for Defendant.

10 (Indorsed:) 9358. U. S. circuit court. Morris J. Drucker vs. William H. Robertson. Copy certiorari. Elihu Root, U. S. attorney, attorney for defendant. Take notice that the within is a copy of a certiorari this day issued out of the circuit court of the United States for the southern district of New York. New York, Sept. 29, 1884. Yours, Elihu Root, U. S. attorney, attorney for defendant. To C. Curie, esq., plaintiff's attorney.

11 Circuit court of the United States for the southern district of New York.

MORRIS J. DRUCKER, PLAINTIFF,
against
WILLIAM H. ROBERTSON, DEFENDANT. } Complaint.

Plaintiff's complain:

1st. That defendant was, during the time hereinafter named, collector of customs of the United States at the port of New York.

2nd. That plaintiff was, during said times, partners in trade under the firm name of Morris J. Drucker, and as such duly imported and entered at the port of New York the goods described in the bill of particulars annexed.

3rd. The defendant, as such collector, exacted from plaintiff as and for duties thereon, and plaintiff in order to obtain said goods, were compelled to pay and did pay the sum of thirteen hundred and seventy-four $\frac{50}{100}$ dollars in excess of the amount required by law.

4th. That plaintiff filed with defendant due and timely protests in writing upon each entry of said goods against his decision exacting such duty, setting forth distinctly and specifically the grounds of objection thereto, and also as above stated.

12 5th. That plaintiff made due and timely appeals in each case to the Secretary of the Treasury, who has affirmed the decision of defendant as to certain of said entries, and as to the rest of said entries has neglected to answer said appeals and more than ninety days had elapsed since said unanswered appeals when this action was commenced.

6th. That the bill of particulars, hereto annexed, states for each importation separately the date of entry at the custom-house, of the payment of duty in excess, of the filing of the said protests, of the appeal to the Secretary of the Treasury, and of his decision thereon, together with the other particulars required by law, and is made a part hereof.

7th. That said sum, so exacted as aforesaid, has never been repaid to plaintiff, and is still due and owing to them.

Wherefore plaintiff demands judgment against defendant for thirteen hundred and seventy-four $\frac{50}{100}$ dollars, with interest on the several sums named in the bill of particulars from the several dates of payment as appear thereby, together with the costs and disbursements of this action.

CHAS. CURIE,
Attorney for Plaintiffs.

13 Endorsed:) 9358. U. S. circuit court. Morris J. Drucker, plaintiff, against William H. Robertson, defendant. Complaint. Chas. Curie, plaintiff's attorney, 44 Exchange Place, New York city. Due service of a copy hereof admitted, this 10th day of Oct., 1884. Elihu Root, U. S. attorney, attorney for deft.

Bill of particulars. Name of importer, M. J. Drucker.

[For all the importations.]

Description of goods.	Whence imported.	Name of vessel.	Date of invoice.	Date of entry at custom-house.	Amount of duty illegally exacted.	Date of payment of duties in excess.	Protest filed.	Date of appeal to Secretary of the Treasury.	Date of Secretary's decision.
			1883.	1883.		1883.	1883.	1883.	
For coverings & putting up	Liverpool	Scythia	Aug. 9	Aug. 23	2.80	Aug. 23	Dec. 15	Dec. 15	No ans. recd.
Charges on webbing & on mdse	"						1884.	1884.	
"	"	Bothnia	Nov. 1	Nov. 16	2.45	Nov. 17	Apl. 12	Apl. 12	"
Shoe gorings	"	City of Chicago	Oct. 23	" 5	3.15	" 5	" 12	" 12	"
"	"	" " Chester	Nov. 17	Dec. 3	25.65	Dec. 4	Feb'y 27	Feb'y 27	June 4, '84.
"	"	Arizona	Dec. 8	" 19	24.80	" 20	Mch. 27	Mch. 27	No ans. recd.
"	"	Germanic	" 1	" 17	20.60	" 17	" 27	" 27	"
Eyelets for shoes	"	Abyssirria	" 13	" 27	55.00	" 28	" 27	" 27	"
"	Havre	France	May 11	May 23	427.00	June 30	June 19	June 19	June 7, '84.
Shoe gorings	Glasgow	Furnessia	June 7	June 25	734.20	" 26	July 18	July 18	July 16, "
"	Liverpool	Bothnia	Nov. 1	Nov. 16	21.50	Nov. 17	Ap. 12	Apl. 12	No ans. recd.
"	"	City of Chicago	Oct. 23	" 5	36.15	" 7	" 12	" 12	"
	"	Gallia	" 18	" 7	21.20	" 7	" 12	" 12	"
					1,374.50				

15 (Indorsed:) 9358. U. S. circuit court, southern district of New York. M. J. Drucker against Wm. H. Robertson. Bill of particulars.

16 (Copy.)

Circuit court of the United States, for the southern district of New York.

MORRIS J. DRUCKER ET AL.
versus
WILLIAM H. ROBERTSON, COLLECTOR, ETC.

The defendant answers to the complaint as follows:

I. He denies that the true duty, or that the true and lawful rate of duty, on the goods referred to in the complaint, was as stated in the complaint; and he denies that the plaintiff was compelled to pay or did pay to the defendant, as collector or otherwise, the sum stated in the complaint, or any sum in excess of the amount required by law as duties upon the said goods, or that any sum of money unauthorized by law was exacted as duties on said goods or otherwise.

II. He denies that the plaintiff filed with the defendant any protest or protests in writing in which the grounds of objections to the exaction of duties on said goods were distinctly and specifically stated.

II. He denies that the sum stated in the complaint or any sum is now due and owing the plaintiff.

IV. He denies that he has any knowledge or information sufficient to form a belief as to whether the goods alleged in the complaint to have been imported at the time therein mentioned were in fact such goods as are described in the said complaint.

V. And further answering, the defendant alleges that all moneys received by him from the plaintiff, in respect of the importations in the complaint alleged to have been made, were demanded of the plaintiff and were by plaintiff voluntarily paid to him in his capacity as collector of customs as and for duties due the United States on imported merchandise, and were forthwith, before the commencement of this action and before the receipt by defendant of any protest or objection on the part of the plaintiff, paid over by the defendant in his official capacity aforesaid to the United States and placed beyond his control.

VI. And further answering, the defendant alleges that all moneys received by him from the plaintiff, in respect of the importations in the complaint alleged to have been made, were sums due from the plaintiff to the United States as duties, according to the rate of duty imposed by law, upon articles of merchandise imported by plaintiff and assessed with duty, and no other sums than duties regularly assessed and ascertained and liquidated according to law upon the plaintiffs' entry thereof were collected or received by defendant from the plaintiff.

Wherefore defendant demands judgment, that the complaint be dismissed with costs.

WILLIAM DORSHEIMER,
U. S. Att'y, Att'y for Def't.

17 (Indorsed:) 9358. Copy. U. S. circuit court, southern district of New York. Morris J. Drucker vs. William H. Robertson, collector, etc. Answer. William Dorsheimer, U. S. att'y, att'y for def't. Due service of a copy of the within answer is hereby admitted. New York, Oct. 20, 1885. Chas. Curie, plaintiffs' attorney. To Chas. Curie, plaintiffs' attorney.

18 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court rooms, in the city of New York, on Monday, the 17th day of December, in the year of our Lord one thousand eight hundred and eighty-eight.

Present, the honorable E. Henry Lacombe, circuit judge.

MORRIS J. DRUCKER
vs.
WILLIAM H. ROBERTSON. } No. 9358.

Now comes the plaintiff, by Stephen G. Clarke, his attorney, and moves the trial of this cause.

Likewise comes the defendant, by Macgrane Coxe, esq., assistant United States attorney, his attorney.

Thereupon a jury is empannelled and the cause proceeds to trial. Now, afterward, to wit, on the 18th day of December, inst., after hearing the evidence of the respective parties, the agreement of counsel, and the instructions of the court, the jury retire, under charge of officers duly qualified to attend them, and on their return say that they find a verdict for the plaintiff (as to Exhibit 2) in the sum of five hundred and five dollars and eighty-two cents ($505\frac{82}{100}$), and a verdict for defendant as to the other exhibits.

19 It is ordered, on motion of Stephen G. Clarke, esq., plaintiff's attorney, that the plaintiffs have a stay of all proceedings on said verdict for sixty (60) days within which to make and serve a bill of exceptions.

On motion of Macgrane Coxe, esq., assistant U. S. attorney, a certificate of probable cause is granted, and a stay of all proceedings for sixty (60) days in which defendant may make and serve a case, with leave to turn the same into a bill of exceptions.

An extract from the minutes.

JOHN A. SHIELDS,
Clerk.

20 U. S. circuit court, southern district of New York.

MORRIS J. DRUCKER
vs.
WILLIAM H. ROBERTSON. } Judgment, N. S. 9358.

The above cause having been brought on for trial before the honorable E. Henry Lacombe, judge of this court, and a jury duly empaneled to try the same on the 17th day of December, in the year one thousand eight hundred and eighty-eight.

And a verdict having thereafter been found by the jury under the direction of the court in favor of the plaintiff in the sum of five hundred and five dollars and eighty-two cents, and the costs herein having been taxed in the sum of forty-six dollars and eighty-five cents:

Now, on motion of Charles Curie, esq., attorney for the plaintiff herein—

21 It is adjudged that the plaintiff, Morris J. Drucker, have judgment against the defendant, William H. Robertson, in the sum of

$505.82 damages, $59.34 interest, and $46.85 costs, making in all the sum of six hundred and twelve dollars and one cent ($612.01), and have execution therefor, dated New York, December 2nd, 1890.

Judgment signed this second day of December, A. D. 1890.

JOHN A. SHIELDS,
Clerk.

(Endorsed) N. S. 9358. U. S. circuit court, southern district of New York. Morris J. Drucker vs. William H. Robertson. Judgment roll. Charles Curie, attorney for plaintiff, 44 Exchange Place, N. Y. U. S. circuit court. Filed Dec. 2, 1890, 2.50 p. m. John A. Shields, clerk.

22 U. S. circuit court, southern district of New York.

MORRIS J. DRUCKER
vs.
WILLIAM H. ROBERTSON. } N. S. 9358.

Plaintiff's bill of exceptions.

The issues in the above entitled action came on for trial before the Hon. E. Henry Lacombe, circuit judge, and a jury, on the 17th day of December, 1888.

The plaintiff imported in the year 1883 and subsequent to March 3 certain goods composed of wool or worsted, cotton, and India rubber, on which the collector assessed duty at 50 % ad valorem and 30 cents a pound, under the following provision:

"Webbings, gorings, suspenders, braces, beltings, bindings, braids, galloons, fringes, gimps, cords, cords and tassels, dress trimmings, head nets, buttons or barrel buttons, or buttons of other forms for tassels or ornaments, wrought by hand or braided by machinery, made of wool, worsted, the hair of the alpaca goat or other animals, or of which wool, worsted, the hair of the alpaca goat or other animals is a component material, thirty cents per pound, and in addition thereto fifty per centum ad valorem."

Plaintiff also during the same period imported certain articles upon which the defendant assessed duty as manufactures of brass at 35
23 % ad valorem under provision of the statute.

The goods containing rubber were all classified by the appraiser as webbing.

As to those goods plaintiff protested, claiming them to be dutiable under the provision of Schedule N of the act of 1883, viz:

"India rubber fabrics, composed wholly or in part of India rubber, not specially enumerated or provided for in this act, thirty per centum ad valorem."

Plaintiff also imported certain eyelets of metal used for shoe fastenings, upon which the collector, the defendant, assessed duty at thirty-five per centum ad valorem as manufactures of brass, and the plaintiff duly protested, as follows:

"Claiming that under existing laws and particularly by Sch. M., sec. 2504, U. S. R. S., said goods are liable at no more than 6c. per M as eyelets, or 30 % as buttons, and not at 35 % ad val., or as charged by you," and afterward in due time appealed and brought this suit.

Further to maintain these issues plaintiff introduced evidence tending to show as follows:

MORRIS J. DRUCKER, being duly sworn, testified in substance as follows:

I am the plaintiff in this action; am an importer of leather, elastic belts, eyelets, and eyelet hooks, at 176 William street; have been in that business twenty odd years. I am familiar with the invoices in evidence,
24 and the goods covered by them were all received by me. The samples of the webbing contained in these invoices all contain rubber; some cotton, rubber, and wool, and others cotton, rubber, and silk, and others cotton and rubber. The rubber threads run through the fabric and make it elastic. The webbing is used to put in shoes, so that the shoe can be easily put on and taken off and will keep its place when it is on. It is woven and comes in long lengths about twenty-five yards long and from five to five and a half inches wide as a general thing, sometimes narrower and sometimes wider. They are sold by the yard.

(Witness handed samples of the metal goods, S–4, 5, and 6.) These are a species of eyelet used for shoes as eyelets and are put in the upper part of the boot to hold laces, a different species of eyelets being put in the lower part.

Being cross-examined by defendant's counsel, witness testified as follows: [Referring to samples of webbing] I know of nothing else except this class of article sold in trade and commerce in this country under the name of goring.

Samples S–4, 5, and 6 are bought and sold in the trade and commerce of this country as eyelet hooks. I have always sold them as eyelet hooks. My customers always orders them as eyelet hooks. Lacing studs are a different article; they are only made in this country and the eyelet hooks are imported. One is a solid piece of metal and the other one is a hollow piece; they are both used for the same purpose.

25 Redirect examination by plaintiff's counsel:

The lacing studs are not made in this country; they are a patented article and have been made only a few years. There is only one manufacturer, as far as I know, who makes those studs. They have never been made the subject of importation that I know of. They are not sold as eyelet hooks. Eyelet hooks have been imported for the last fifteen years.

JOHN J. KRIEG, a witness on behalf of plaintiff, who, having been duly sworn, testified in substance as follows:

I have been a wholesale and retail dealer in shoe findings in this city for 19 years. My place of business is at 39 Warren street. Exhibits S–4, 5, and 6 are eyelet hooks; have dealt in them for 10 or 12 years. They are used as a substitute for eyelets for lacing purposes on shoes and corsets. On shoes there are ordinary eyelets put in first to about half way up, and these eyelet hooks are put in further up as a convenience for rapid lacing. They fulfill the same function as the ordinary eyelet.

We deal in elastic webbing, like Exhibits 1, 2, and 3. It is a woven fabric. I have been in factories where it is made. The function of the rubber in a shoe or anything else is to tighten it in an article of that kind, to hold it firmly wherever it is placed. These goods are used in shoes,

on the side of the shoe, so as to permit the foot to enter, and after
26 it has entered to close it up. The elasticity is a necessity of the use to which they are put, and that elasticity comes from the rubber.

EDWIN B. STIMPSON, a witness on behalf of the plaintiff, having been first duly sworn, testified in substance as follows:

I am one of the firm of E. B. Stimpson & Son, No. 31 Spruce street, manufacturers of shoe machinery and dealers in eyelets, shoe laces, and hooks. Samples 4, 5, and 6 are eyelet hooks; have been familiar with the articles eight or ten years. That is the name under which it is bought and sold and has been about fifteen years. Exhibit 7 is a lacing stud, made in Boston, Mass., by the Lacing Stud Company; a patented article. We have handled them for eight years or more.

Being cross-examined by defendant's counsel, witness said: Exhibits 4, 5, and 6 are called lacing hooks, and some call them eyelet hooks. They are bought and sold under both names.

Redirect examination by plaintiff's counsel:

I have bills here as far back as 1876 in which these samples, those of the plaintiff's importations, are called eyelet hooks. That is the way they are bought, "Boss Eyelet Hooks."

Recross-examination by defendant's counsel:

"Boss hooks" are of American manufacture.

RYNIER V. AMERMAN, a witness called on behalf of plaintiff, having been duly sworn, testified:

27 I deal in shoe findings at No. 9 Spruce street; have been in that business 17 or 18 years. Samples 4, 5, and 6 are made out of metal, and are what we call eyelet hooks, and they are used to hold shoe laces. The other three samples are elastic gorings, made of silk, wool, and rubber; without the India rubber it would not be good for anything for shoe purposes. They are woven—made on looms. They come in pieces of 25 or 30 yards, and usually five and five and a half inches wide, sometimes narrower and sometimes wider.

Being cross-examined by defendant's counsel:

Exhibits 4, 5, and 6, plaintiff's importations, are eyelet hooks; they might possibly be called lacing hooks, but ninety-nine times out of a hundred they would be called eyelet hooks. Exhibit 7 is a lacing stud.

Redirect examination by plaintiff's counsel:

There is a webbing used in the business that is not elastic for pulling on boots or gaiters; it is three-quarters to one and a half inches wide, and is known in trade as webbing. It has no India rubber in it.

Whereupon plaintiff having rested, defendant called in his behalf JOSEPH W. GREEN, Jr., who, having been duly sworn, testified:

I am a manufacturer of elastic goring, webbing, cords, braids, narrow fabrics generally; am connected with the Glendale Elastic Fabric Company; have been in the manufacturing business 10 years and
28 importing 12; the article represented by the samples in my hand [Plaintiff's Exhibits 2–W–1, S–S 2, and S, C, 3] is goring.

Q. What article was known in trade and commerce in this country in the early part of 1883 as "goring?"

(Plaintiff's counsel objected to the question as immaterial and irrelevant and also that this witness has not qualified himself to testify as to it. The court overruled the objection, and plaintiff's counsel took an exception on each ground.)

A. These articles were, and others similar. All three of these articles were known as gorings. There are a great many qualities, but they are all of this same description. The capital of the Glendale Manufacturing Company is $250,000. We have 350 looms and about 2,000 braiders. I have for years gone about among the trade very largely.

Being cross-examined by plaintiff's counsel:

Exhibit S–W–1 is a woven fabric composed of wool, cotton, and India rubber; the rubber is put in there to make it elastic, and if the rubber was left out it would not be good for the purposes for which it was made.

We do not buy and sell this article by the name of elastic goring.

Q. Does not the trade buy and sell it under the term of elastic goring?

A. No, sir; they come in and ask for so many yards of goring.

Q. The term elastic goring is never used?

29 A. I could not swear that nobody ever asked for elastic goring. The term is goring, and buyers ask for it as goring. The component materials in Exhibit 31 are the same as Exhibit S–W–1. We could make one like that, but of course there is a great variety in the mode of putting the goods together. We don't make that stitch, but there are different stitches, different patterns, difference in the quantity of wool or quantity of rubber, or cotton; these are the only differences. Our elastic gorings, like this sample, are made of wool, cotton, and India rubber, and are a woven fabric intended to be used, as applied to shoes, to hold them on.

Narrow webs may be garter webs or arm elastics, or arm bands, as some call them. Elastic or nonelastic, we make the whole line. The narrow garter webs are called loam webs. The word "elastic" we don't use. The manufacturers of our line abroad always advertise themselves as manufacturers of elastic webs. Our names came from similar names in England at the time. The foreign manufacturers' terms are different from ours. The goods are bought as "union webbing" and sold as "union gorings."

The term "elastic webbing" was one which was the outgrowth of the importing business, and the term "elastic goring" was the outgrowth of the manufacturing business and the distributing business here. The term "goring" came into vogue when elastic rubber thread was dis-

30 covered and vulcanized, and elastic rubber threads were inserted in webbing to make it suitable for shoes. If a man sent to me for elastic webbing, I would ask whether he wanted a narrow or wide fabric; if he asked for webbing I would know that he meant gaiter webbing; he certainly would not mean goring. Webbing to-day is understood by us as meaning the narrow fabric, like suspender webbing, gaiter webbing, &c.

When purchasers come in to buy they call for wool goring, silk goring, or cotton goring, the elastic being assumed; the word elastic being an adjective to denote that the article is elastic, they might use the adjective. The terms "elastic goring" and "elastic webbing" are synonymous; elastic webbing seems to be the foreign designation and elastic goring the

American. The term webbing, or elastic webbing, as applied to goods like Exhibit 7 (referring to witness' testimony in a former action), was known in the trade and commerce of this country prior to 1883 among importers and large dealers in the article.

The article known as wool elastic webbing consists of wool for the face, and cotton for the back, and India rubber cords for the centre; the article Exhibit S–W is similar to it. Cotton elastic webbing has face of cotton, back of cotton, and India rubber cords in the centre. They are all fabrics of which India rubber is a part. There are other webbings, such as gaiter webs—nonelastic. There the word comes in generally; it is a very general term, has been for years. There is a gaiter webbing that you
31 pull your shoe on with. I think if you used the word webbing the thing would occur to manufacturers first as a gaiter webbing to pull shoes on with. Wool elastic webbing has been at one time used for making the whole top of shoes.

Redirect examination by defendant's counsel:

We make either the elastic or the nonelastic fabric in my establishment. We have dealt in the trade in both classes of fabrics prior to March 3, 1883.

Q. Was there immediately prior to March 3rd, 1883, any article known in trade and commerce of his country as "goring" which was nonelastic.

(To this question plaintiff's counsel objected; the court overruled the objection and plaintiff's counsel duly excepted and the exception was allowed.)

A. There was none. In 1883 there were various articles known in trade and commerce as webbing, or webbings, some of which were elastic and some not elastic.

Q. Was there in 1883 any articles in trade and commerce known under the name of "goring," or "elastic goring," excepting the exhibits before you?

(To this question plaintiff's counsel objected; the court overruled the objection and plaintiff's counsel duly excepted and the exception was allowed.)

A. I think not.

EDWARD E. SPENCER, a witness on behalf of the defendant, who, having been first duly sworn, testified in substance as follows:

32 My business is shoe machinery and shoe findings; have been in that business about twenty-five years in this city; at present at 34 Warren street; I am acquainted with the articles represented by samples, Exhibits 4, 5, and 6. I do not know what they are called by the trade generally, but we call them lacing hooks. We sell to some hundreds of different firms, houses, or manufacturers, I presume, and whenever they send for the articles represented by Exhibits 4, 5, and 6 they send for them generally under the name "lace hooks."

(Plaintiff's counsel objects that witness is incompetent if he does not know what the trade calls them. The court overruled the objection and plaintiff's counsel duly excepted, and the exception was allowed.)

There are a great many different sizes of eyelets. Samples, defendant's Exhibit A, are articles which we buy and sell as eyelets. There are no buttons in Exhibits 4, 5, 6, and A, as far as I can see.

Being cross-examined by defendant's counsel:

Exhibits 4, 5, and 6 are also called eyelet hooks to some extent. Exhibit 7 is a lacing stud.

NEILS OLSODSON, a witness on behalf of plaintiff, who, having first been duly sworn, testified in substance as follows:

My business is leather and shoe findings, at No. 40 Spruce street; have been connected with the business twenty years. [Witness shown samples 12, 2, 3, 4, 5, and 6.] I deal in all those goods and have for many years. They are bought and sold in the trade and commerce of this country
33 and were in 1883 under the name of eyelet hooks.

Being cross-examined by defendant's counsel:

Articles represented by Exhibits 4, 5, and 6 are sometimes called lacing hooks, but that is not the proper name for them. It is an improvement on the eyelet because it hooks the lace instead of having the lace passed through it. They are never bought and sold as buttons or eyelets, but as eyelet hooks.

EMIL WALDENBURGER, a witness on behalf of the plaintiff, who, having been first duly sworn, testified in substance as follows:

I am a manufacturer of shoe uppers and also deal in shoe findings. I deal in goods similar to plaintiff's samples 1 to 6, and have dealt in them for 10 years. Their name has been the same during that time; they are eyelet hooks.

Being cross-examined by defendant's counsel:

Some call them lacing hooks as well as eyelet hooks.

MORRIS J. DRUCKER, being recalled and further examined as a witness for plaintiff, testified in substance as follows:

Samples S–1, 2, and 3 were generally bought and sold in trade and commerce in this country in 1883 and prior thereto as elastic webbing, and there has been no change in the use of the term down to the present time.

Plaintiff's counsel read in evidence bills referring to goods sim-
34 ilar to samples 1, 2, and 3, from manufacturers in this country, as follows:

"M. J. Drucker to J. H. Buckley & Sons, Dr. Elastic web manufacturers. To 375 yards No. 632 5-inch cotton terry."

Terry refers to the same thing as elastic, only it has got a nap on the face.

"M. J. Drucker to the Bridgeport Elastic Web Company, manufacturers of the best qualities of elastic gussett web. To four pieces 5-inch No. 570, 600 yards."

Being cross-examined by defendant's counsel:

The wool terry is made out of wool. The face is wool to distinguish it from cotton and silk. They all three have elastic in them. If the words "elastic webbing" were used alone, I would not know whether it was wool webbing or silk webbing or cotton webbing.

Exhibits 1, 2, and 3 sometimes went by the name of "goring" in trade and commerce in this country. If any one sent an order to my store for

"goring" I would expect them to mention the number, or the quality, or something more definite than that. There are twelve or fifteen different kinds of elastic webs and so-called gorings. They are all elastic.

We also deal in nonelastic webbings. If any one sent to my store for "wool gorings" of a particular number I would know what he meant; if one sent for "wool webbing" of a particular number I should judge by the trade he is in; if he was a shoemaker or manufacturer I
35 should think he wanted the elastic. If he used the term "goring" and I did not know about his trade, I would not know that he wanted elastic. I do no know of an article in trade and commerce known as a goring which is not elastic.

Whereupon, testimony being closed, the defendant moved the court to direct a verdict for the defendant and against the plaintiff upon the eyelets, which motion the court then and there granted and directed the jury accordingly, and the counsel for plaintiff duly excepted.

The counsel for defendant also moved the court to direct a verdict for the defendant upon the entry by the "City of Chester" of certain webbing composed of wool or worsted, cotton and India rubber, on the ground that the protest heretofore set out was filed before and not after the liquidation of the entry, which motion the court granted and directed the jury accordingly, and counsel for plaintiff duly excepted.

And inasmuch as the foregoing matters of law and fact do not otherwise appear upon the records of the trial, the judge before whom the cause was tried has, upon the request of the plaintiff, by his counsel, settled and signed the foregoing as and for the plaintiff's bill of exceptions herein as of the 18th day of December, 1888.

E. HENRY LACOMBE.

The foregoing bill of exceptions is correct as to form.

EDWARD MITCHELL,
U. S. Att'y.
STANLEY, C. & S.,
Counsel for Pl'ff in Error.

36 (Endorsed:) N. S. 9358. U. S. circuit court, southern district of New York. Morris J. Drucker vs. William H. Robertson. Plaintiff's bill of exceptions. Charles Curie, attorney for plaintiff, 44 Exchange Place, N. Y. U. S. circuit court. Filed Dec. 2, 1890. John A. Shields, clerk.

37 United States circuit court, southern district of New York.

MORRIS J. DRUCKER
vs.
WILLIAM H. ROBERTSON, AS COLLECTOR OF customs. } N. S. 9358.

Defendant's bill of exceptions.

And afterwards, to wit, on the 17th and 18th days of December, eighteen hundred and eighty-eight, this cause came on to be tried at a stated term of the above-named court, duly holden before the Hon. E.

Henry Lacombe, judge of the United States circuit court for the southern district of New York, and a jury duly empanelled and sworn to try the issues herein.

The plaintiff appeared by Stephen G. Clarke, esq., and the defendant by Macgrane Coxe, esq., assistant United States attorney; and during the course of the trial and before the rendering of the verdict therein the counsel for defendant did take and allege certain exceptions to certain rulings of the court, which said exceptions were by the court duly allowed, and are hereinafter more at large set out.

To sustain the issues upon his part, the plaintiff produced evidence tending to show that in the latter half of the year eighteen hundred and eighty-three and in the year eighteen hundred and eighty-four he
38 imported into the port of New York a quantity of certain elastic fabrics, composed of silk, cotton and rubber, hereinafter more particularly described, upon which the defendant, as collector of customs at the port of New York, upon the entry thereof, levied and collected duty of thirty-five per centum ad valorem, under and by virtue of Schedule N of the tariff act of March 3rd, 1883, which provides as follows: "Webbing composed of cotton, flax, or any other materials, not specially enumerated or provided for in this act, thirty-five per centum ad valorem." That the plaintiff protested against this assessment and levy, claiming in substance that the importations in question were properly dutiable, being fabrics in part India rubber, not otherwise specially enumerated or provided for, at thirty per centum ad valorem, by virtue of Schedule N of the tariff act of March 3rd, 1883, which provides as follows: "India rubber fabrics, composed wholly or in part of India rubber, not specially enumerated or provided for in this act, thirty per centum ad valorem," and not at thirty-five per centum ad valorem, as levied by the defendant; that appeal was duly taken to the Secretary of the Treasury, and that this action was seasonably brought to recover the alleged excess of duties so collected.

The plaintiff, being sworn as a witness in his own behalf, produced a sample of the importation in question, and testified in substance: I am an importer of leather and elastic belts and other goods. My place
39 of business is at 176 William st., New York. The sample shown me (Plaintiff's Exhibit S 2) is a sample of part of my importation in this case. It is composed of cotton, silk, and rubber, and is a sample of that class of goods covered by these invoices. It is used to put in shoes. Rubber threads run through the fabric. The purpose of the rubber thread is to make the fabric elastic, so that the shoe can be put on and off and will keep its place when it is on. The fabric is woven. It comes in long lengths about twenty-five yards long in the piece and from five to five and a half inches wide, as a general thing, and it is sold by the yard. It is a woven fabric, and is known in trade and commerce in this country as webbing, and was so known prior to March 3, 1883, and on that day.

Being cross-examined by Mr. Coxe: Without the India rubber it would not answer its use. I did not mean that its principal part in value was rubber. I could not tell you. I am not posted in that respect.

JOHN J. KRIEG, being produced and sworn as a witness on behalf of plaintiff, testified in substance as follows: I have been a dealer in shoe findings at wholesale and retail in this city for nineteen years. I deal in

elastic webbing like Exhibit S 2. It is a woven fabric. I have been in factories where it is made; it contains rubber. The function of the rubber is in a shoe or anything else to hold it firmly where it is placed. This class of goods is used in shoes, on the side of the shoes, so as to
40 permit the foot to enter, and after it has entered to close it up, so that the elasticity is a necessity of the use to which it is put, and that elasticity comes from the rubber.

RYNIER V. AMERMAN, being produced and sworn on behalf of the plaintiff, testified in substance:

I am in the business of leather and shoe findings at 9 Spruce st., in this city, and have been in that business for seventeen or eighteen years. Exhibit S 2 is elastic gorings. It is gorings or webbing. It is composed in part of India rubber. Without the India rubber it would not be good for anything for shoe purposes. There are other webbings that do not contain rubber. I should imagine they are woven, as near as I could tell. I am not a practical man on that. They come in pieces, about twenty-five yards to the piece by five to five and a half inches wide, and are sold by the yard. I have seen them as wide as seven inches, possibly wider. There is a webbing which is not elastic, used in the business for boots or gaiters, for pulling on the boots or gaiters. I have one attached to my own shoe. It is the ordinary strap you pull on shoes with. It is three-quarters to one and a half inches wide. It is known in trade and commerce as webbing, and it has no India rubber in it.

At the close of the case, both parties having rested, the counsel for defendant moved the court to direct the jury to find a verdict in favor of defendant upon the ground that the plaintiff had not adduced sufficient evidence to sustain his cause of action.

41 The court denied this motion, to which ruling the defendant's counsel duly excepted, which exception was duly allowed by the court.

The court then, upon motion of plaintiff's attorney, directed the jury to find a verdict in favor of the plaintiff, to which ruling of the court the defendant's counsel duly excepted, which exception was duly allowed by the court. The jury returned a verdict for the plaintiff in accordance with the direction of the court.

And whereas the exceptions, matters, and things aforesaid would not appear by the record, I have settled, allowed, and signed this bill of exceptions on prayer of the said defendant by his counsel; and

It is ordered that the same be filed as part of the record herein with like force and effect as if the same had been reduced to writing, and signed and filed before the case was given to the jury, and as of the 18th day of December, 1888.

E. HENRY LACOMBE.

(Endorsed:)—N. S. 9358. U. S. circuit court, southern district of New York. Morris J. Drucker versus William H. Robertson. Defendant's bill of exceptions. Edward Mitchell, United States attorney, attorney for defendant. U. S. circuit court. Filed Jun. 21, 1890. John A. Shields, clerk.

42 Supreme Court of the United States.

MORRIS J. DRUCKER, PLAINTIFF IN error,
vs.
WILLIAM H. ROBERTSON, DEFENDANT IN error.
} Assignment of errors.

Afterwards, to wit, on the second Monday of October in the same term before the justices of the said court at the Capitol in Washington, come the said plaintiff in error, by Charles Curie, his attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid in form aforesaid given, was given for the said plaintiff in error against the said defendant in error, for the sum of six hundred and twelve dollars and one cent, whereas, by the law of the land, the said judgment ought to have been given for the said plaintiff against the said defendant in a much larger amount.

And the said plaintiff prays that the judgment aforesaid for the error aforesaid and other errors in the record and proceedings aforesaid may be reversed, annulled, and altogether held for nothing, and that he, the said plaintiff, may be restored to all things which he has lost by occasion of said judgment, &c.

CHARLES CURIE,
Attorney for Plaintiff in Error.

43 (Indorsed:) 9358. United States Supreme Court. Morris J. Drucker, plaintiff in error, vs. William H. Robertson, defendant in error. Assignment of error. Charles Curie attorney for plaintiff in error. Due service of a copy of the within assignment of error is hereby admitted this 9th day of Dec., 1890. Edward Mitchell, attorney for defendant in error. U. S. circuit court, filed Dec. 9, 1890. John A. Shields, clerk.

44 Supreme Court of the United States.

WILLIAM H. ROBERTSON, PLAINTIFF IN error,
vs.
MORRIS J. DRUCKER, DEFENDANT IN error.
} Assignment of errors.

Afterwards, to wit, on the second Monday of October in the same term before the justices of the said court at the Capitol in Washington, come the said plaintiff in error, by Edward Mitchell, U. S. attorney, his attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid in form aforesaid given, was given for the said defendant in error against the said plaintiff in error, whereas by the law of the land, the said judgment ought to have been given for the said plaintiff against the said defendant.

And the said plaintiff prays that the judgment aforesaid for the error aforesaid and other errors in the record and proceedings aforesaid may be reversed, annulled, and altogether held for nothing, and that he, the said plaintiff, may be restored to all things which he has lost by occasion of said judgment, &c.

EDWARD MITCHELL,
U. S. Attorney for Plaintiff in Error.

45 (Indorsed:) 9358. United States States Supreme Court. William H. Robertson, plaintiff in error, vs. Morris J. Drucker, defendant in error. Assignment of error. Edward Mitchell, U. S. attorney, attorney for plff. in error. Due service of a copy of the within assignment of error is hereby admitted this 22d day of Dec., 1890. Charles Curie, attorney for defendant in error. To Charles Curie, esq., attorney for defendant in error. U. S. circuit court. Filed Dec. 23, 1890. John A. Shields, clerk.

46 Supreme Court of the United States.

MORRIS J. DRUCKER, PLAINTIFF IN ERROR,
against
WILLIAM H. ROBERTSON, DEFENDANT IN ERROR. } Joinder in error.

And afterwards, to wit, on the second Monday of October, in said term, the said defendant in error, by Edward Mitchell, U. S. att'y, his attorney, comes here into court and says that there is no error either in the record or proceedings aforesaid, or in the giving of the judgment aforesaid.

And he prays that the said Supreme Court, before the justices thereof, now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, except as to the amount thereof given for the said plaintiff in error.

EDWARD MITCHELL,
U. S. Att'y, Attorney for Defendant in Error.

47 (Indorsed:) 9358. United States Supreme Court. Morris J. Drucker, plaintiff in error, vs. William H. Robertson, defendant in error. Joinder in error. Edward Mitchell, U. S. att'y, for defendant in error. Due service of a copy of the within joinder in error is hereby admitted this 22d day of Dec., 1890. Charles Curie, Maxwell, attorney for plaintiff in error. To Charles Curie, attorney for plaintiff in error. U. S. circuit court. Filed Dec. 22d, 1890. John A. Shields, clerk.

48 Supreme Court of the United States.

WILLIAM H. ROBERTSON, PLAINTIFF IN ERROR,
vs.
MORRIS J. DRUCKER, DEFENDANT IN ERROR. } Joinder in error.

And afterwards, to wit, on the second Monday of October, in said term, the said defendant in error by Charles Curie, his attorney, comes here into court and says that there is no such error either in the record or proceedings aforesaid, or in the giving of the judgment aforesaid, as the plaintiff in error has alleged and assigned.

And he prays that the said Supreme Court, before the justices thereof, now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c., unless the same be modified upon a writ of error sued out by the defendant to this writ.

CHARLES CURIE,
Attorney for Defendant in Error.

49 (Indorsed:) 9358. United States Supreme Court, William H. Robertson, plaintiff in error, vs. Morris J. Drucker, defendant in error. Joinder in error. Charles Curie, attorney for defendant in error. Due service of a copy of the within joinder in error is hereby admitted this 23d day of December, 1890. Edward Mitchell, attorney for plaintiff in error. U. S. circuit court. Filed Dec. 23, 1890. John A. Shields, clerk.

50 Circuit court of the United States of America, for the southern district of New York, in the second circuit.

MORRIS J. DRUCKER
vs.
WILLIAM H. ROBERTSON. } Bond for damages and costs.

Know all men by these presents, that we, Morris J. Drucker and Julius Binge, are held and firmly bound to the above named William H. Robertson in the sum of two hundred and fifty dollars, to be paid to the said William H. Robertson for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the 5th day of December, in the year of our Lord one thousand eight hundred and ninety.

Whereas the above named plaintiff in error has prosecuted his writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above entitled suit by the judge of the circuit court of the United States for the southern district of New York;

Now therefore the condition of this obligation is such, that if the above named plaintiff in error shall prosecute his said writ of error to effect and answer all damages and costs, if said plaintiff in error fail to make his said writ of error good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

M. J. DRUCKER,
176 *William St., N. Y. City.*
JULIUS BINGE,
44 *Exchange Place, N. Y. City.*

Sealed and delivered, and taken and acknowledged, this 5th day of December, 1890, before me.

[SEAL.] WILLIAM H. NORTHUP,
Notary Public, Kings Co.

Certificate on file in New York County.

51 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Morris J. Drucker and Julius Binge, each for himself, being duly sworn, depose and say that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

M. J. DRUCKER,
176 *William St., N. Y. City.*
JULIUS BINGE.
44 *Exchange Place, N. Y. City.*

Sworn to this 5th day of December, A. D. 1890, before me.
[SEAL.] WILLIAM H. NORTHUP,
Notary Public, Kings Co.

Certificate on file in New York County.

(Indorsed:) 9358. U. S. circuit court. Southern district of New York. Morris J. Drucker vs. William H. Robertson. Bond for costs on. Approved as to form, amount, and sufficiency of sureties. E. Henry Lacombe. U. S. circuit court. Filed Dec. 9, 1890. John A. Shields, clerk.

52 UNITED STATES OF AMERICA, ss:

To William H. Robertson, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, eighteen hundred and ninety-one, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Morris J. Drucker is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties on that behalf.

Dated, December 9th, 1890.

E. HENRY LACOMBE.

53 (Indorsed:) E. & A. A. 954. 9358. U. S. Supreme Court. Morris J. Drucker, plaintiff in error, against William H. Robertson, defendant in error. Citation. Charles Curie, attorney for plaintiff in error. Due service of a copy of the within citation is hereby admitted this 9 day of Dec., 1890. Edward Mitchell, attorney for defendant in error. U. S. circuit court. John A. Shields, clerk. Filed Dec. 9, 1890.

54 UNITED STATES OF AMERICA, ss:

To Morris J. Drucker, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, eighteen hundred and ninety-one, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein William H. Robertson is